

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION**

LUPERCAL LLC,

Plaintiff

v.

PLAINS CAPITAL BANK,

Defendant

Case No. 6:19-cv-00202

JURY TRIAL DEMANDED

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Lupercal LLC (“Lupercal” or “Plaintiff”) files this Complaint for patent infringement against Defendant Plains Capital Bank (“Plains Capital” or “Defendant”), and alleges as follows:

NATURE OF THE ACTION

1. This is an action for patent infringement arising under 35 U.S.C. § 1 *et seq.*

PARTIES

2. Lupercal is a limited liability company organized and existing under the laws of the State of Texas with its principal place of business in Dallas, Texas.

3. Upon information and belief, Defendant, Plains Capital, is a Texas company having a principal place of business in this judicial district at 201 W 5th St Ste 100, Austin, TX 78701.

JURISDICTION AND VENUE

4. This Court has original jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

5. Upon information and belief, Defendant is subject to personal jurisdiction of this Court based upon it having regularly conducted business, including the acts complained of herein, within the State of Texas and this judicial district and/or deriving substantial revenue from goods and services provided to individuals in Texas and in this District.

6. Venue is proper in this District under 28 U.S.C. §§ 1391 and 1400 because Defendants have committed acts of infringement and have regular and established places of business in this judicial district.


COUNT I
(Infringement of U.S. Patent No. 9,386,094)

7. Lupercal incorporates paragraphs 1 through 6 as though fully set forth herein.

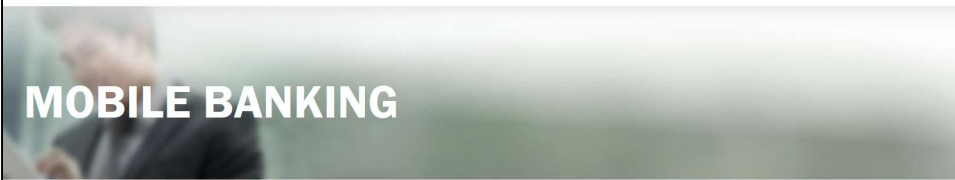
8. Plaintiff is the owner, by assignment, of U.S. Patent No. 9,386,094 (the “’094 Patent”), entitled SYSTEM AND METHOD FOR MEDIA SUBMISSION, which issued on July 5, 2016. A copy of the ’094 Patent is attached as Exhibit A.

9. The ’094 Patent is valid, enforceable, and was duly issued in full compliance with Title 35 of the United States Code.

10. Defendant provides the Plains Capital Mobile Banking App for use with Apple iOS devices and Android devices, which is available for download from Apple’s iTunes App Store and Google Play Apps:



[Personal](#)
[Business](#)
[About](#)

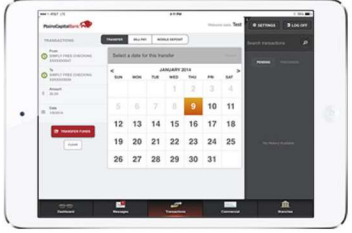


MOBILE BANKING

Access Your Account on the Go

With Mobile Banking, you can do more than just check your balance. Deposit checks, pay bills, and much more with your iPhone® or Android™ at any time, at no charge while still enjoying our personalized, relationship-based approach to managing your finances.

Simply [sign up for Online Banking](#) and then download the PlainsCapital Bank Mobile Banking App to get started!



New Customers

Open an Account

Call Us at [866.762.8392](tel:866.762.8392)

Apply in Person at Your Nearest [Branch Location](#) or











[Apply Online](#)

Switch to PlainsCapital

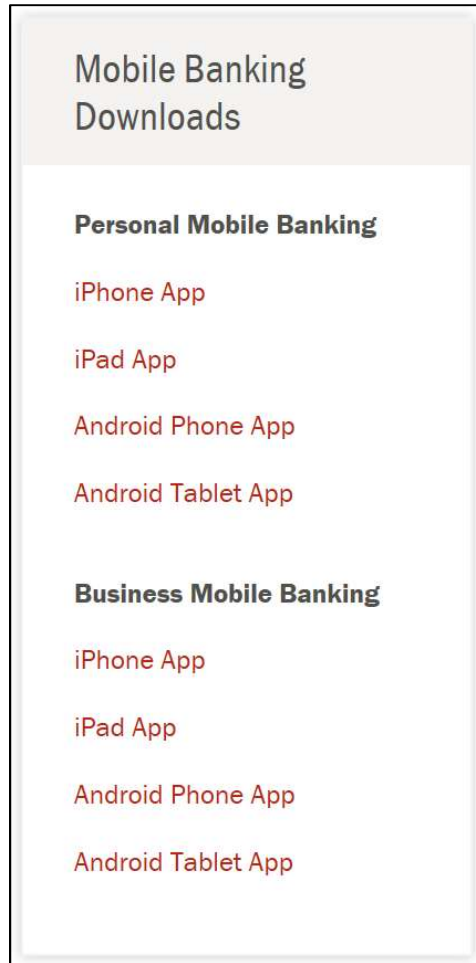
Make the switch. [Learn More](#)

[Download the Switch Kit](#)

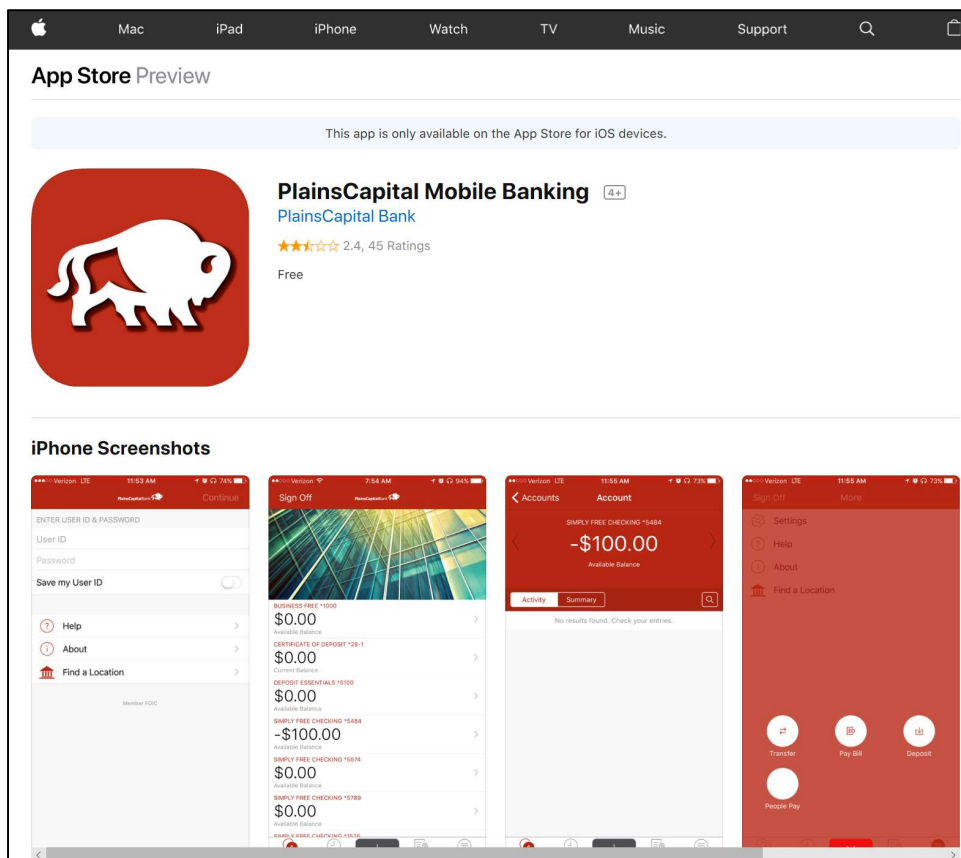
<https://www.plainscapital.com/mobile-banking/>

 <p>Card Controls Take control of your debit card and reduce the risk of fraud with new Card Controls. Learn More</p>	 <p>Cardless Cash Enjoy the freedom to withdraw cash using only your smartphone with new Cardless Cash. Learn More</p>
 <p>Mobile Wallet Connect Apple Pay®, Samsung Pay®, and Google Pay® to your Debit MasterCard®. Learn More</p>	 <p>People Pay Experience the simple & secure way to send money to friends and family. Learn More</p>
 <p>Mobile Deposit Deposits checks directly through our mobile app for a quick convenience. Learn More.</p>	 <p>Mobile Bill Pay Pay bills from the comfort of your home or business trip. Learn More</p>
 <p>Funds Transfers Easily transfer funds between your PlainsCapital Bank accounts. Learn More</p>	 <p>Account Dashboard View all of your PlainsCapital Bank accounts on one screen. Learn More</p>
 <p>Secure Messages Stay alert with PlainsCapital's secure messaging system. Learn More</p>	 <p>Locations If you need cash or want to visit us in person, Mobile Banking can help you find the PlainsCapital ATM or branch location closest to you.</p>

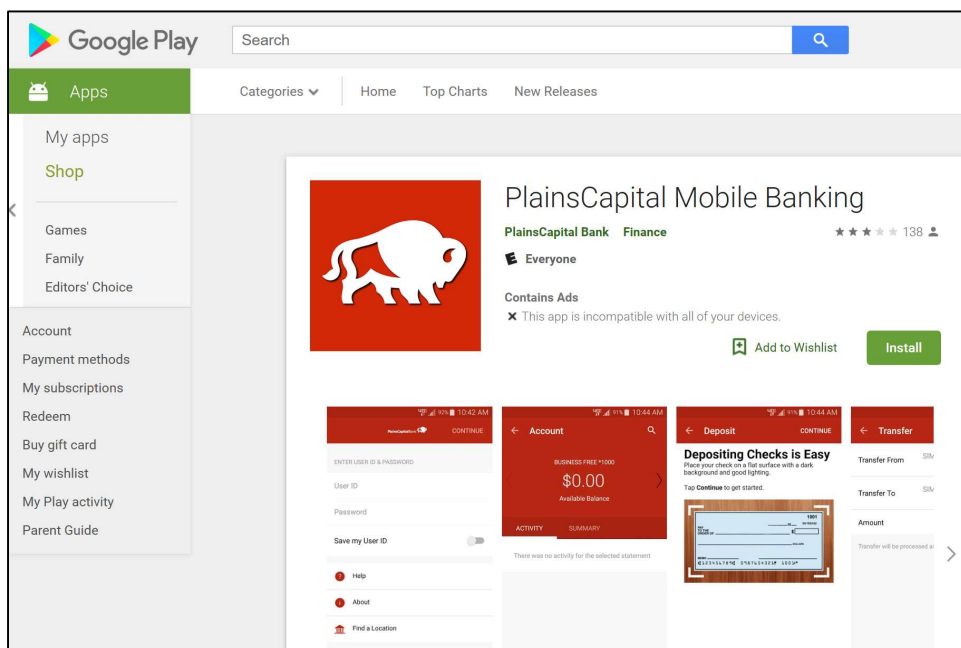
<https://www.plainscapital.com/mobile-banking/>



<https://www.plainscapital.com/mobile-banking/>



<https://itunes.apple.com/us/app/plainscapital-mobile-banking/id1108061964?mt=8>

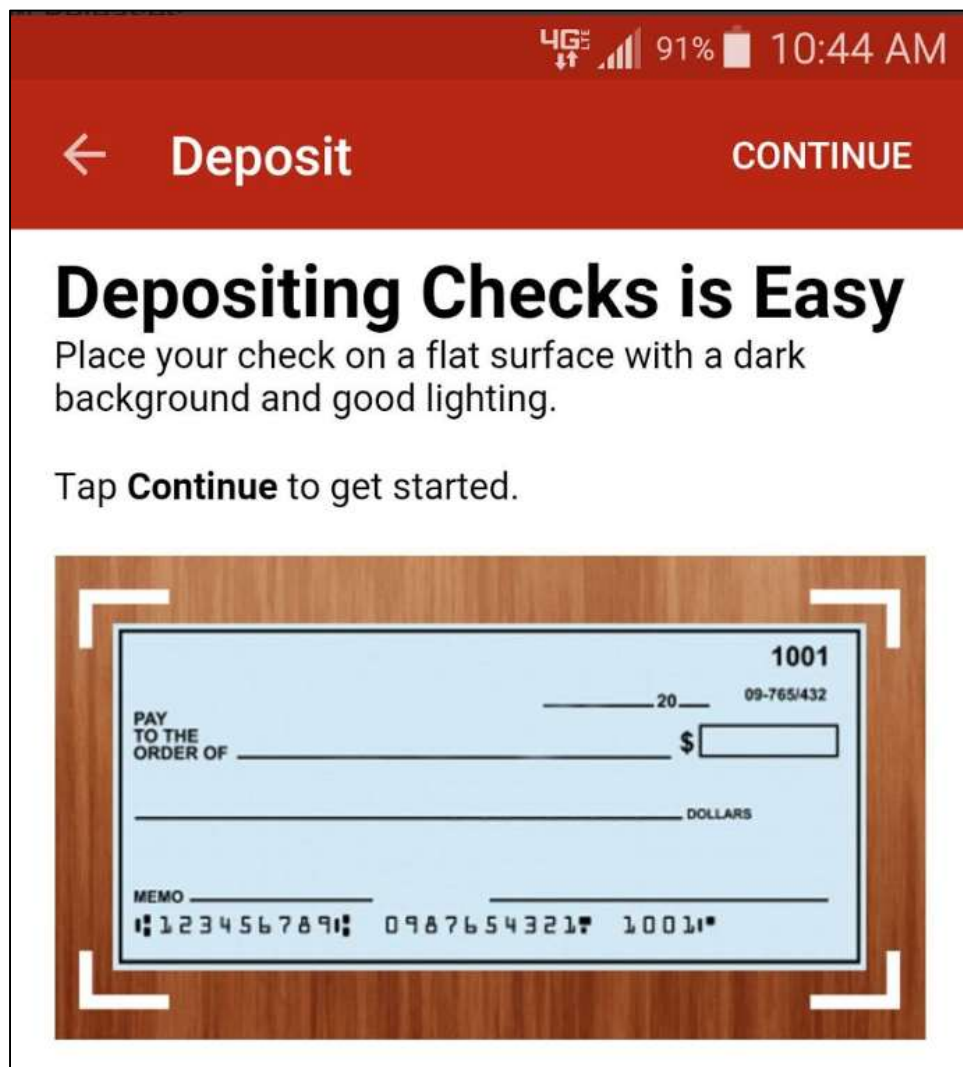


https://play.google.com/store/apps/details?id=com.mfoundry.mb.android.mb_338

What Is Mobile Deposit?

With PlainsCapital Bank's Mobile Deposit, eligible and enrolled customers can deposit checks through our [Mobile Banking](#) app.

<https://www.plainscapital.com/mobile-deposit/>



https://play.google.com/store/apps/details?id=com.mfoundry.mb.android.mb_338

Why am I Unable to Deposit My Check?

Some reasons why your check may not be accepted through Mobile Deposit are:

- The check has already been submitted
- The type of check is not accepted (see next FAQ)
- Folded or torn corners
- Handwriting is not legible or is not in blue or black ink
- Front image is not legible
- Amount entered does not match the amount on the check
- Routing and account numbers are unclear
- Image is too dark or blurry
- Lack of proper signature and/or endorsement

<https://www.plainscapital.com/mobile-deposit/>

11. Defendant controls the operation and use of the Plains Capital Mobile Banking App and encourages its customers to use the Plains Capital Mobile Banking App to deposit checks to the customer's accounts with Defendant. The Defendant's Plains Capital Mobile Banking App is the Accused Instrumentality through which Defendant and its customers infringe the '094 Patent.

12. At least by developing, distributing, operating, promoting, and encouraging the use of the Plains Capital Mobile Banking App, Defendant encourages its customers to use the Plains Capital Mobile Banking App to practice the claimed methods, which Defendant controls the use of and derives a direct benefit and profit from.

13. Upon information and belief, Defendant has infringed and continues to infringe one or more claims, including Claim 42, of the '094 Patent by developing, distributing, operating, promoting, and encouraging the use of the Plains Capital Mobile Banking App in the United States without authority. Defendant has infringed and continues to infringe the '094 Patent either directly or through the acts of inducement in violation of 35 U.S.C. § 271.

14. Defendant has been on notice of the '094 Patent at least as early as February 25, 2019 when it received a notice letter from Defendant, which included a claim chart comparing the '094 Patent claims to the Plains Capital Mobile Banking App.

15. Claim 42 recites:

42. A computer implemented method performed by an image submission tool on a user device, comprising:

causing the image submission tool to generate a visual representation of one or more images, the visual representation enabling a user to determine whether the one or more images should be replaced with one or more replacement images;

causing the image submission tool to enable a user to enter text information for association with the one or more images or the one or more replacement images;

causing the image submission tool to pre-process the one or more images or the one or more replacement images to produce one or more pre-processed images, the pre-processing by the image submission tool controlled by one or more pre-processing parameters received from a device separate from the user device in a conversion of the one or more images or the one or more replacement images as specified for use by a receiving party;

causing the image submission tool to enable a user to submit the one or more pre-processed images; and


causing the image submission tool to transmit the one or more pre-processed images.

16. The Plains Capital Mobile Banking App enables account holders to deposit checks electronically by taking a photo of the front and back of the check. After selecting an account to deposit the check to, the user enters the amount of the check.

17. The photo of the front and back is manually taken by the user—as a result, the images produced may be blurry or otherwise undesirable, and the application enables the user to retake a given photo (front or back). A visual representation of the photos is displayed on the screen.

18. After selecting an account to deposit the check to, the user enters the amount of the check.

19. Upon being accepted by the user (via the Plains Capital Mobile Banking App), the application pre-processes the front and back images to produce and front and back pre-processed images that is controlled by one or more preprocessing parameters received from a device (e.g., a server used to download the Plains Capital Mobile Banking App) separate from the user device (user's smart phone) in a conversion of the one or more images or the one or more replacement images as specified for use by a receiving party.



Build your Mobile Deposit® app on Mitek's strong foundation

- Image analytics meet Check 21 Industry Standards
- Advanced algorithms automatically correct images; dewarp, deskew, distortion, and poor lighting conditions.
- Specialized OCR software for highly accurate MICR validation
- API for easy integration into mobile banking apps as well as core systems
- State-of-the-art encryption
- Various account capable so the user can select from the accounts
- Mobile Deposit® history review for deposits and processed images
- International Support – available and supported in many countries around the globe.
- Available for iOS and Android
- Hosted and On-premise deployment

<https://www.miteksystems.com/mobile-deposit>

Check 21 Compliant Checks

There have been some concerns about what modifications need to be made to check designs to make them Check 21 compliant. Check 21 facilitates image exchange by allowing banks to truncate original checks after imaging, and creating a new negotiable instrument called a “substitute check” or image replacement document (IRD).

Specifications for an Image Replacement Document-IRD (ANS X9.100-40) describes the requirements of the substitute check.

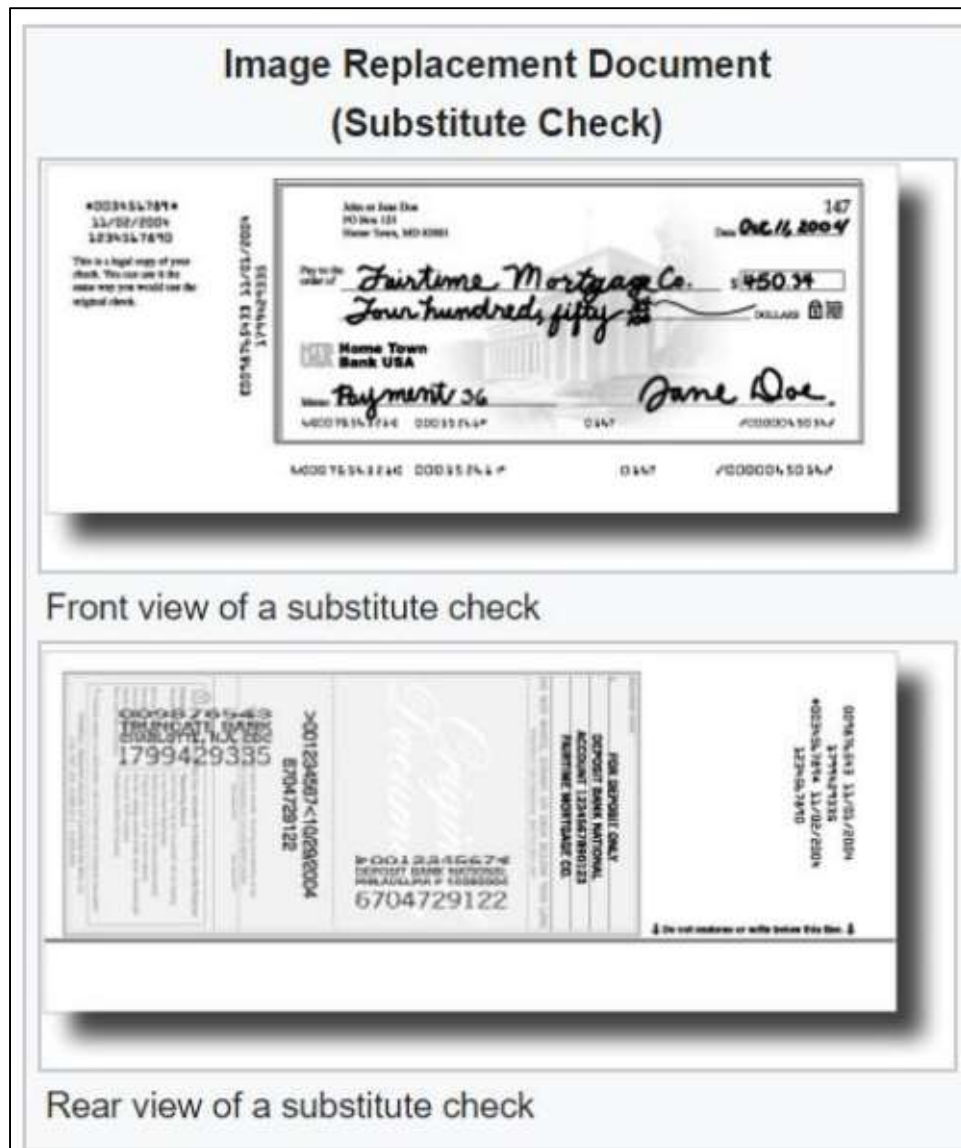
No new standards for check design have been defined as a result of Check 21. As long as our checks are American National Standards compliant, no design changes have to be made. Image quality is more important than ever with the possibility that a substitute check will be created from a check image. The *Bank Check Background and Convenience Amount Field Specification* (ANS X9.100-30 and ANS X9.100-110) and *Specifications for Check Endorsements* (ANS X9.100-111) are the standards most likely to affect the legibility of data in an image. These two standards specify background reflectance, clutter, and PCS of areas where important check data is found.

Image File Size Issues

As financial institutions move to imaging checks, bank operations are increasingly focused on image file storage size. Although there is no American National Standards limit on file storage size, financial institutions are choosing to set their own file size limits. Some of these institutions are choosing values so low that check security is threatened.

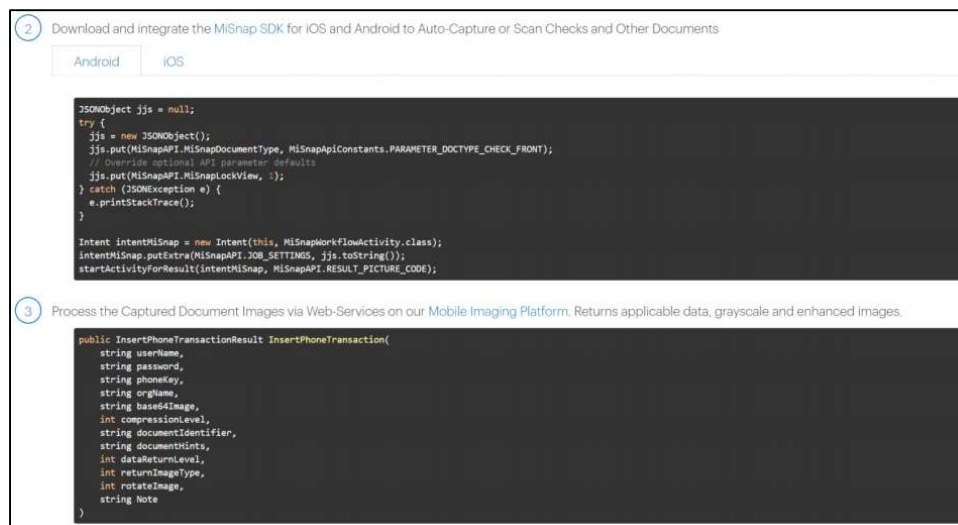
There are several reasons banks are pushing for smaller image file sizes. The primary reason is storage. As banks increase the number of items that they image, they will require more electronic storage capacity. In addition, banks may be providing their corporate customers with check images on removable storage, such as CDs. The banks want to minimize the number of CDs they need to send back to customers (optimally, one CD per customer). Finally, as banks begin to increase image exchange, image file size will play a major role in data transmission speeds.

http://www.abagnale.com/pdf/checks_image_file_size.pdf



https://en.wikipedia.org/wiki/Substitute_checks_in_the_United_States

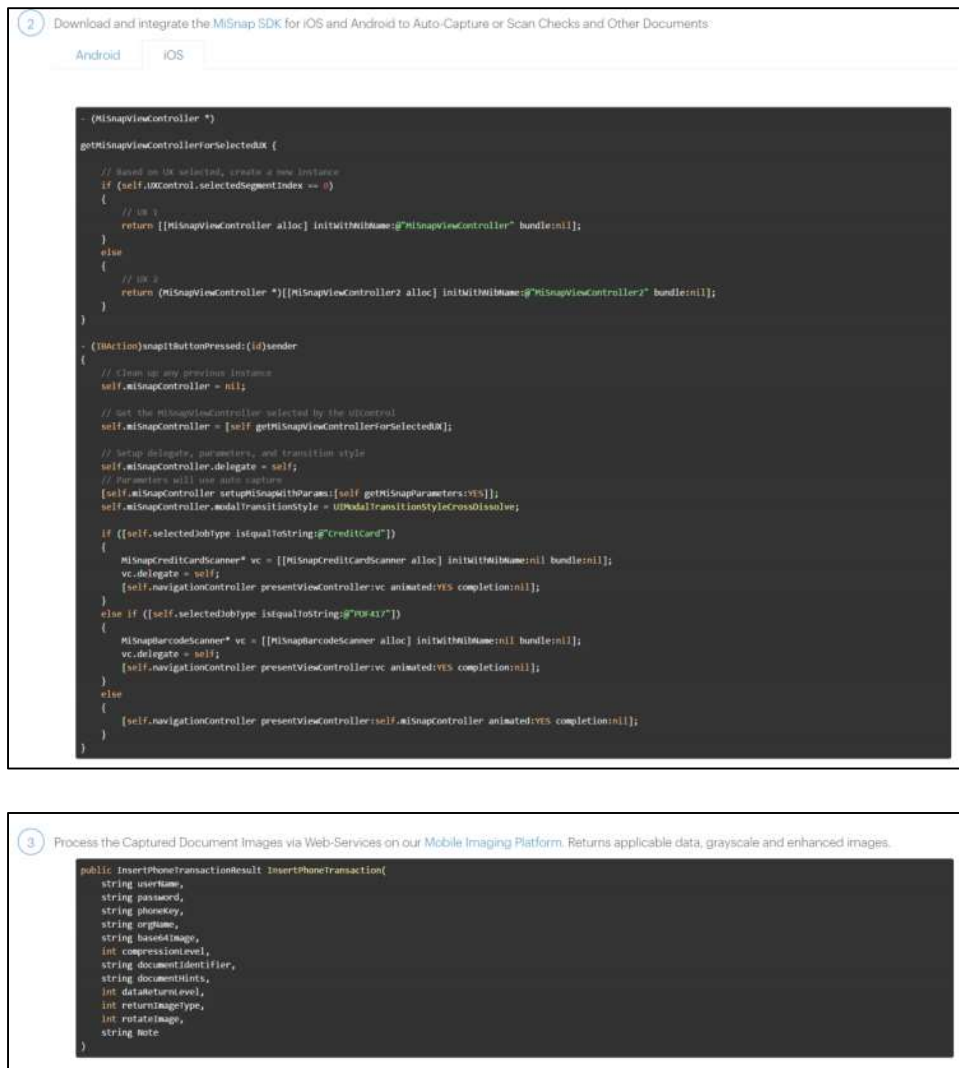
20. The parameters used for performing the pre-processing operations are part of the software library code (Mitek SDK) and API code provided by Mitek and used in the Plains Capital Mobile Banking App.



<https://developers.miteksystems.com/>

21. The foregoing shows the Mitek MiSnap SDK interface code use to capture the image (top portion) and the Mitek Web Services interface (bottom portion) used for an Android mobile banking application using the Mitek SDK (software development kit) and code library. The image is sent as a base-64 format image to a Mitek Web Services server. The image capture interface code using Androids variant of Java. The Mitek Web Services uses a Java interface, and the “InsertPhoneTransaction” is a Java object.

22. The following shows the Mitek MiSnap SDK interface code used to capture the image (top portion) and then send the pre-processed image to the Mitek Web Services for further processing (bottom portion) using an iOS application. The image capture interface code using Apple’s Objective C language. “InsertPhoneTransaction” Java object is the same as used by the Android application.



23. The Plains Capital Mobile Banking App enables the user to submit the pre-processed front and back images. Once the user hits submit, the pre-processed images are transmitted to a Mitek Web Services server.

24. The pre-processed images are first sent to a Mitek Web server to be processed using Mitek image processing Web Services, which (substantially immediately) return images of the front and back of the check that are compliant with the Check 21 substitute check requirements.

25. The Check 21 compliant images (substitute check) are then sent to a PlainsCapital server. The processing performed by the Mitek Web Services is transparent to the user experience and is performed on the order of a second or less.

26. Lupercal has been damaged by Defendant's infringing activities.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests the Court enter judgment against Defendant:

1. declaring that the Defendant has infringed the '094 Patent;
2. awarding Plaintiff its damages suffered as a result of Defendant's infringement of the '094 Patent;
3. awarding Plaintiff its costs, attorneys' fees, expenses, and interest; and
4. granting Plaintiff such further relief as the Court finds appropriate.

JURY DEMAND

Plaintiff demands trial by jury, Under Fed. R. Civ. P. 38.

Dated: March 11, 2019

Respectfully submitted,

/s/ Raymond W. Mort, III

Raymond W. Mort, III
Texas State Bar No. 00791308
raymort@austinlaw.com

THE MORT LAW FIRM, PLLC
100 Congress Ave, Suite 2200
Austin, Texas 78701
Tel/Fax: (512) 865-7950

**ATTORNEYS FOR PLAINTIFF
LUPERCAL LLC**